

THE NEW-JERSEY ELECTION CASE.

Report of the Minority of the Committee of Elections.

HOUSE OF REPRESENTATIVES, JULY 16, 1840.

THE undersigned, constituting a minority of the Committee of Elections, to which was referred the New-Jersey case, not concurring in the result to which the majority of the committee has come, and believing that it sufficiently appears, from the evidence, that Messrs. Charles C. Stratton, John P. B. Maxwell, and William Halsted, were duly elected members of the twenty-sixth Congress, to the exclusion of Messrs. Joseph Kille, Daniel B. Ryall and Philemon Dickerson, by a majority of the lawful votes of the People of that State, beg leave to submit the subjoined exposition of their views, to enable this honorable body to form a just estimate of the proceedings of the committee, and of the merits of the case. The undersigned feel great difficulty and embarrassment in presenting to the House, within a reasonable compass, such a development of the case, and of the action of the committee on the questions arising, as the importance of the subject would seem to require. On opening the evidence, we perceived that the topics of controversy were exceedingly numerous and complicated, and, in course of the investigation, it was necessary, sometimes, to recur to provisions of the laws of the United States, sometimes to those of New-Jersey, and at other times to the principles of the common law, and of general jurisprudence. With no less than four hundred and ninety cases of controverted votes, and with this great diversity of legal principle and statutory provision, applicable to the case, it was to be expected that there would be an occasional difference of opinion in the committee as to the fact, the law, or both. If nothing but such a difference had marked the deliberations of the committee, the undersigned would have remained silent; but the proceedings throughout have been of so singular a character and distinguished by such an utter disregard of the plainest and best settled principles of law and evidence, and have been so capricious, inconsistent, partial, irregular, and unjust, that they feel impelled, by a high sense of obligation to the cause of justice and truth, to undertake, by a brief induction of facts, to show that the conclusions and judgments of the majority of the committee are wholly unworthy of the sanction of this House, and of the confidence of the country. If the testimony adduced be examined in connexion with the journal kept by the committee, where are recorded the opinions and votes of the members on all the various questions arising in the case, it will appear that the majority, in numerous

0 028 001 728 0



LIBRARY OF CONGRESS

instances, overruled objections taken by Messrs. Ayer and his associates to the legality of votes, on the ground that the evidence was inadequate, when, in fact, such evidence was adequate and sufficient to convince any reasonable mind; that the majority insisted upon a much higher measure of proof to support an objection on one side than was required to sustain a similar objection on the other, and Messrs. Ayer and his associates often failed with satisfactory evidence, when Messrs. Vroom and others prevailed with that which was comparatively light and trivial; that the majority applied principles of evidence of statutory construction or general law in such a manner as to defeat the efforts of one side to establish the illegality of votes, and then refused, on some frivolous ground of distinction, to apply the same principles to cases arising on the other side, when the merits were obviously alike, and that they adopted, and as against one of the parties pertinaciously adhered to, certain general rules which were eminently adapted to defeat all inquiry into the merits, and to make the whole investigation little better than a mockery and a farce, thus rendering the important provision of the Constitution, that each House shall be the judge not merely of the returns and qualifications, but also of the election of its members, vain and nugatory.

The undersigned, before they advert to the cases by which they can, as they believe, evince the justice of these remarks, would invite the attention of the House to the laws of New-Jersey on the qualifications necessary to the exercise of the elective franchise. The people of that State have not a Constitution in the ordinary acceptation of the term, but they live under a system of government ordained by a Colonial Legislature, which has the force and effect of a Constitution, and is intended in some of its provisions to be inviolate, as the members of the General Assembly are obliged at the outset of every session to swear that they will not vote to change such provisions, of which that relating to the elective franchise is not one.

By the Constitution or Ordinance a considerable property qualification was originally made indispensable, but this has been subsequently modified by legislative enactment.

The undersigned have felt considerable doubt and difficulty in arriving at the true intent and meaning of the laws of New-Jersey on this subject on account of their uncertainty, yet, taking into consideration the very general construction given in that State to the doubtful clauses, and favoring, so far as may be, the policy of extending this invaluable right—a policy which has manifestly received the sanction of the good people of New-Jersey—they are satisfied that it was intended by the law-makers of that State that the franchise should be exercised by all white male citizens of the United States who have attained twenty-one years of age, who reside in the township where they offer to vote, and have resided in the county one year next preceding, and paid a tax, or been assessed in conformity to the laws of the State. It is required that the person voting should be a free white male citizen of the United States, and this made it necessary for the committee in a very numerous class of cases to examine the naturalization laws of the

JK 1359
26th
713

(3)

United States to determine what evidence of alienage or naturalization is admissible, competent, and sufficient, and whether the proceedings taken in certain cases with a view to naturalization were valid, and conferred the right of citizenship. It is required also that the voter should be one and twenty years of age, and this involved questions of fact whether certain persons whose votes were challenged as illegal were or were not of that age at the October election in 1838. It is required that he should reside in the township at the election, and in the county during the year preceding, and this rendered it our duty to advert to the law of domicil, and to determine what did and what did not amount to a change of residence under almost every variety of circumstances; and finally, it is required that the voter either should have paid a tax or been assessed; and this often involved the committee in doubt and perplexity touching the terms of a very incoherent law in ascertaining when the tax must have been paid, and how the party should have been assessed, and whether pauperism in New-Jersey operates to exclude a person from the elective franchise, and, if so, when and under what circumstances. Besides these, a great variety of incidental questions arose, some of which were referable to the ordinary principles of law and evidence, and others to the peculiar institutions of New-Jersey, but the undersigned have not time to advert to them in any other than this general form.

We submit this statement touching the extent, variety, and complication of the questions comprised in this controversy, that the House may appreciate the obligation which the committee were under to ascertain the true principles applicable to each head of inquiry, and to apply such principles, when ascertained, with scrupulous fidelity to all cases as they arose, irrespective of parties, and with a view to administer even-handed and exact justice to all concerned. It is with much regret that the undersigned find themselves constrained to say, (which they do without impeaching the motives of their associates constituting the majority of the committee,) that such an administration of even-handed justice is not to be found in the record; on the contrary, they perceive in it nothing but a confused medley of adjudication, little better than a chaos of principles, with all the jarring elements of inconsistency united to defeat the requisitions of legal rights and obvious truths. To go into all the particulars by which the propriety of these suggestions can be sustained is wholly impossible; but the undersigned will endeavor to illustrate their views by a series of sample cases, and will thus show that any thing else may be found in these anomalous and strange proceedings than a sound, impartial, and faithful administration of justice.

To enable the House to appreciate the action of the committee on the cases to which we are about to refer, we would remark that it was conceded by all the members that the reception of a vote by the election officers raised a presumption in favor of the legality of such vote. Early in our deliberations, we adopted a resolution declarative of this principle, the justice and propriety of which must be apparent to all. But, very soon after we commenced scrutinizing the votes, we perceived that there was a radical difference

of opinion in the committee touching the use which should be made of this presumption.

The undersigned are persuaded that the only effect which can be given to the reception of a vote at the polls is to throw the burden of proof on the party objecting to its legality; but the majority seemed disposed to carry the principle much further, and to convert the presumption into "a swift witness" in favor of the opposite party. If a credible witness was adduced who proved the fact of illegality by his positive oath, the majority would confront such witness with the presumption, and would give it all the efficacy appertaining to testimony under oath, and, thus balancing the oath of the living witness against the presumption, they would come to the conclusion that nothing was proved. Nay, more; the majority, strange as it may seem, held that the presumption was so strong that it imposed on the party excepting to a vote the burden of proving a negative. When Messrs. Aycrigg and others objected to a vote on the ground of alienage, they were required to prove not merely that the voter was an alien born, but that he had not been naturalized--a task which, in many cases, is wholly impracticable.

The undersigned cannot omit noticing one curious circumstance, and that is, that this presumption seldom visited the committee-room except when *one* of these parties was endeavoring to establish the illegality of votes. If it appeared at all when the other party was making the same effort, the undersigned must say they were scarcely conscious of its presence. Why this principle should "wax and wane" in this singular manner we acknowledge ourselves unable to determine, and we must refer the solution of the phenomenon to more philosophical minds. But the undersigned will recur to these topics hereafter. They now proceed to the illustrations; and first, they invite the attention of the House to the cases of John McConaghy and Charles T. Pool, the first objected to by Messrs. Aycrigg and others, and the last by their competitors, and both on the ground of alienage.

John McConaghy, being sworn, saith: That he voted on the last day of the election in the township of Amwell, at the Congressional election held at the house of Nathan Risley, in the village of Lambertsville, in said township, in the year 1838; thinks it was in the month of October; does not recollect the day of the month. I voted the democratic ticket; it was called the Van Buren ticket; I received a Whig ticket of Edward Hunt; I did not like it; I received another of Mr. Samuel Carhart; said ticket was the Van Buren democratic ticket; said ticket was for members of Congress; I put said ticket in the ballot-box. I was born in the north of Ireland, in the kingdom of Great Britain; I arrived in this country on the 16th day of July, A. D. 1801; I was about sixteen years old. I never had any naturalization papers in the State of N. Jersey; I have voted 11 years in N. Jersey; I was never called upon for any naturalization papers; I never had any at any time when I voted in New-Jersey; I had not any at the time that I refer to in this deposition, (meaning the year 1838,) when I voted for members of Congress. I am fifty-four years old; I can read; the ticket which I voted at the time referred to in this deposition had on it the names of the Van Buren candidates for Congress.

his
JOHN X McCONAGHY.
mark.

In the face of such testimony as this, the committee refused to deduct the vote of Mr. McConaghy from the poll of Messrs. Vroom and others. He did not pretend that he had been naturalized; on

the contrary, swore substantially that he had not been: no other construction can be given to his evidence. We ask the House to contrast this case with that of Charles T. Pool, which is as follows:

Charles T. Pool, sworn, saith: I voted at the Congressional election in the township of Mansfield, Warren county, New-Jersey, in the year 1838. I am not a native born citizen of the United States of America. I was not naturalized myself at that time, except that I considered myself naturalized by coming here when an infant, and my father being naturalized, I believe. I believe my father was naturalized, because I recollect, when I was young, of hearing him talk about his being naturalized; whether he had been, or was to be, I do not recollect. In the next place, I know of his voting a number of years, and never heard any objection to it. I never saw him vote, to my knowledge. He died when I was about eighteen years of age. I never saw his naturalization papers; I am not positive whether he said he had been naturalized or was to be. I voted a Whig Congressional ticket in the fall of 1838, in this township.

And being cross-examined, saith: I know of my father's voting by hearing him speak of it. I have heard him say he voted the democratic ticket. I know of his going to the polls for the purpose of voting; this was when the parties ran high something like the years 1806, '7, and '8. I think there was an embargo at the time; I recollect hearing my father read about it in the papers; I do not recollect my father's serving on juries; he never was a freeholder in the county, I believe; he died in the year 1813, to the best of my recollection; his name was Cyrus John Pool.

And being called again, in chief, saith: I was five years of age when I came to this country.

CHARLES T. POOL.

In this case the committee decided the vote of Pool to be an unlawful vote, and deducted it from the poll of Messrs. Aycrigg and others. It thus appears that McConaghy was declared a citizen against his own oath that he was and remained an alien. And Pool was determined to be an alien upon the mere fact that he was born such, with very good grounds for believing that he had acquired the rights of citizenship through the naturalization of his father.

The undersigned are at a loss to conceive of any language that will adequately express their sense of the flagrant injustice and inconsistency of these decisions.

The next cases to which the undersigned would invite the attention of the House are those of Candor Carr, whose vote was objected to by Messrs. Aycrigg and his associates on the ground of alienage, and of James B. Bolton, objected to by Messrs. Vroom and others for the same reason; in respect to which the committee, with facts substantially the same, came to directly opposite results.

Candor Carr voted the Administration ticket in the township of Hardiston, in the county of Sussex, at the Congressional election in 1838. His vote was objected to by Messrs. Aycrigg and others on the ground of alienage. He was summoned as a witness, and appeared before the magistrate, but, on the oath being tendered to him, he refused to be sworn or to testify his knowledge of the facts in the case. Samuel McPeck testified that he knew Candor Carr; had heard him say that he came from Ireland; that he was not naturalized in New-York when he first came to that city; did not say how long after, but it was soon after. It was in 1838, some time before the election, that witness heard him say that he had been naturalized. It appears from the evidence that, in that township, the election officers held that aliens or unnaturalized foreigners were, according to the laws of New-Jersey, entitled to vote—a

decision which it is admitted on all hands was palpably erroneous. One would suppose that it would be difficult to raise a presumption in favor of a vote from the mere reception of it by election officers under such circumstances; but the majority, notwithstanding the determination of the board to admit the votes of aliens, and notwithstanding the voter stood obstinately mute when his right was in question, and when he could have vindicated that right by a breath, if it had been susceptible of vindication, held that the mere admission of the vote at the polls proved that the voter was no alien; or, in other words, they gravely concluded from such premises that he had been naturalized; they overruled the objection of Messrs. Aycrigg and others, and held the vote to be a lawful one.

We submit to the House whether, under the circumstances, we use too strong language in pronouncing this result a judicial perversion. But the enormity of the decision cannot be understood till we contrast it with a case to which we now ask the attention of the House.

James B. Bolton voted the opposition ticket in the township of Frankford, in the same county and at the same election. His vote was objected to by Messrs. Vroom and others for the same reason; he was duly summoned by them and refused to appear as a witness. Nathaniel Roe proves that he knows Bolton; that he is a foreigner; from his acquaintance with him he supposes him to be a foreigner; he has told the witness once and since the election that he had been naturalized; has known him five or six years; his vote was not objected to, and nothing was said at that election about foreigners voting. Sam'l Price proves a conversation between himself and Bolton in substance as follows: I told him that if he had been naturalized I considered him a legal voter in the township; he said he had been naturalized in Albany, in the state of New-York. I then told him he had better come down and state the fact, and it would make him a legal voter under the old law; that the new law would require him to produce his papers; that he had better testify to the fact and then send to Albany to get his papers, and that would make him a legal voter next fall; he said it would not cost more to be naturalized again than to get the certificate from Albany; this the witness contradicted, and other conversation followed which need not be repeated. The witness adds: I then told him that I suspected for a long time that he had never been naturalized, from loose expressions that I had heard him make at different times on that subject. Mrs. Buchanan, who was present, then said: I suppose you are now satisfied that he has never been naturalized; I replied that I was. This was said in his presence, to which he made no remarks in reply. It appeared from the evidence that Bolton had voted five or six times before without any objection being made; also the conversation detailed by Price took place when the subpoena was served on Bolton, he, Price, acting as an officer for that purpose. The declaration, therefore, was made by Bolton pending the controversy, and was on that account, in the opinion of the committee, wholly inadmissible.

It would be of dangerous consequence to receive and give effect to conversations had under such circumstances in a case of contest-

ed elections. The House can hardly fail to be impressed with the wonderful coincidence between these cases. In both the voters were foreigners—in both they affirmed that they had been naturalized—in both they refused to be sworn or disclose the facts—and in both they stood mute when their right was called in question. There are strong circumstances in favor of the vote of Bolton which do not exist in the case of Carr: one is, that the authorities of Frankford, unlike those of Hardiston, did not intentionally admit alien votes contrary to law; so that the vote of Bolton was sustained by whatever of presumption there may be resulting from its presentation and admission at the polls. And another is, that Carr affirmed that he was naturalized at a time when he could not have been by the laws of the land, that is to say, when he first came into New-York from Ireland; whereas no such objection exists in the case of Bolton; and yet the majority held, after sustaining the vote of Carr, that the vote of Bolton was an unlawful vote. By what process of reasoning they arrived at such a conclusion the undersigned are at a loss to understand—they are reluctant to believe that it was because Carr voted the Administration, and Bolton the Opposition ticket.

The undersigned will now advert to two very remarkable cases, and which will serve better perhaps than any other to characterize the proceedings of the committee. They are as follows:

Philip Schetter voted the Whig ticket at the township of Millville, in the county of Cumberland, at the same election. Messrs. Vroom and others objected to his vote on the same ground; his own testimony was produced to sustain the objection. He testified that he was a native of Germany, that he was naturalized at the time he voted in 1838, and would have sworn to it at that time. He thinks he stated that he had been naturalized when he offered to vote, but is not certain. Some of the judges had been told of it before. Was naturalized in Tennessee, in 1832. Did not produce any evidence of his naturalization—none was called for. He had not then, nor has he now, any evidence of the fact, but has sent his papers to Germany in order to save the necessity of procuring a substitute in the army. It appears that he had formerly voted at other places besides Millville. There was more testimony adduced, but we have stated all that we deem material. The committee sustained the objection, and deducted the vote from the poll of Messrs. Aycrigg and others.

Archibald McCambridge voted the Administration ticket at the same township and the same election, and Messrs. Aycrigg and others objected to his vote on the same grounds. The voter himself was examined as a witness, and after swearing that he is a native of Ireland, testifies as follows: "I have been naturalized; I was naturalized at Mount Holly; I had been in Millville twice or three times before I was naturalized; don't recollect the year I was naturalized; I think it was in 1821 or 1822, if I remember right; it was in the fall or winter before I broke my thigh." Mount Holly is the county seat of the county of Burlington, and when the witness says he was naturalized in Mount Holly, he doubtless means to be understood to swear that he was naturalized before

some one of the courts held there. Messrs. Aycrigg and others produced the certificate of the clerk of that county, who has the custody of all its judicial records, stating that he had searched the same, and that he could find no record or paper appertaining to the naturalization of the witness. In the face of this fact, the committee overruled the objection, and held the vote to be a lawful vote. To enable the House to appreciate these cases, we would observe, that the committee have often held that they would not require record evidence of naturalization, but would act on secondary proof of that fact—such as the oath of the voter, or other credible evidence. The House will hardly fail to notice how much stronger the case of Schetter is in favor of the voter, than that of McCambridge. In both they were foreigners, and in both they positively swore that they had been naturalized. And in favor of both the presumption existed, which arises from the reception of their votes at the polls; but the testimony of the latter was flatly contradicted by the certificate of the clerk of Burlington county, and yet the committee held the vote cast by Schetter for the Whig candidates to be an unlawful vote, and the vote cast by McCambridge for their opponents to be a lawful vote.

Many other cases, equally significant, might be cited under the head of alienage, but we have neither time nor space to advert to them. The undersigned will next invite the attention of the House to the contrast exhibited by the record in the disposition of the cases objected to on the ground of NON-AGE, or INFANCY.

Augustus Moore voted in the township of Warren, county of Somerset, at the same congressional election; he voted the Administration ticket. Messrs. Aycrigg and others objected to his vote on the ground of infancy, and proved by the testimony of John Muckel that he had a conversation with Moore in the fall of 1838, before the election, and he told him he was not old enough to vote. W. Corey took part in the conversation, and he asked him whether he (Moore) was old enough to vote? Mr. Moore said he was not old enough to vote that year. No testimony was produced in opposition to this, so that the case stood upon a declaration of the voter against his right, made at a time when he had no motive to violate the truth, and yet the majority held the proof inadequate on the ground of hearsay. Contrary to what the undersigned believe to be the true principle, they overruled the objection and decided that the vote was a lawful one.

William Kerris voted at the township of Pequannock, in the county of Morris, at the same election; he voted the Whig ticket; his vote was objected to by Messrs. Vroom and others, on the same ground. They proved by Benjamin Crane that he had been acquainted with Kerris from a child; witness understood him that he would be twenty-one years old in the summer of 1839. Witness did business for him, and he could not sell his lands because he was not of age; that he is about of age now, (deposition taken March 20, 1840.) Wm. Kerris told him so at the time. This was the whole proof; the mere declaration of the voter made out of court more than six months after the election, in substance that he was not of age at the October election of 1838; yet the majority

of the committee sustained the objection of Messrs. Vroom and others in the teeth of their decision in Moore's case, and held the vote of Kerris to be an unlawful vote.

The case of Samuel A. Price, who voted the Administration ticket at Frankford, in the county of Sussex, at the same election, and whose vote was objected to by Messrs. Aycrigg and others, on the ground of non-age, will be found to conflict also with that of Augustus Moore, [vide printed evidence, pages 198, 199, 200, 1, 2, 4, and 5.] It is in fact a much stronger case, for Price refused to appear when summoned and state his age; but the committee refused to deduct his vote from the poll of Messrs. Vroom and others. It thus appears that the statement of a voter as to his age is good and sufficient for one of the parties, but not so in favor of the other. We shall leave the majority to assign the reason, if any exists, for such a distinction.

The undersigned would observe that very numerous cases were submitted to the committee of objections to votes on the ground of NON-RESIDENCE. The laws of New-Jersey require that the voter should have resided in the county one year previous to, and in the township where he votes at the time of election. No fixed period of residence in the township is necessary—it is sufficient if the voter be actually domiciled there at the election, but the residence in the county must have been one year next preceding the election, and the question of non-residence submitted to the committee appertained principally to the latter species of residence. The principles applicable to the subject are well settled; the most important of which we cite from Judge Story's able and learned treatise on the Conflict of Laws, from page 44 to 47. They are as follows: "The place of birth of a person is considered as his domicil, if it is at the time of his birth the domicil of his parents." "*Prima facie* where a person lives is taken to be his domicil, until other facts establish the contrary." "The place where a married man's family reside is generally to be deemed his domicil, and if a married man has his family fixed in one place and he does his business in another, the former is considered the place of his domicil." "If a married man has two places of residence at different times of the year, that will be esteemed his domicil which he himself selects or describes to be his home, or which appears to be the centre of his affairs, or where he votes or exercises the rights and duties of a citizen." "The mere intention to acquire a new domicil, without the fact of removal, avails nothing; neither does the fact of removal without the intention; both must concur." "A domicil once acquired remains until a new one is acquired," which is so "when a person actually removes to another place with an intention of remaining there for any indefinite period of time."

These are the principles, but the undersigned insist that the majority have not applied them properly to the cases submitted, and their decisions are irreconcilable and contradictory, and this they propose to illustrate as follows:

Thomas A. Drake voted in the township of Warren, in the county of Somerset, at the Congressional election in 1838; he voted

the Administration ticket; Messrs. Ayerigg and others objected to his vote on the ground that he had not resided in the county one entire year next preceding the election. Jeremiah Drake, the father of Thomas A. swore that his son went to Rahway on the 5th day of October, 1838; he went there to work and live; his wife was there at the time; he married at Rahway, in the county of Essex; he made his home there at that time, and has continued to live there ever since. The witness afterwards adds, "When Thomas went away from my house on the 5th of October, 1838, he went then [to Rahway] to live, and has remained there ever since, and has never had a home in Warren township since, that I know of." Nothing was shown in opposition to this evidence, which we deem proof positive of a change of residence from Somerset to Essex county, anterior to the election in 1838, which took place on the 9th and 10th days of October of that year. The objection of Messrs. Ayerigg and others was overruled.

Marshall Conant voted in the same township at the same election. His vote was objected to for non-residence. John D. Putnam was the only witness called, who proves that Marshall Conant lived at Noah Drake's that season; that he moved from Drake's between the first and middle of September, 1838; took away a large chest and small trunk, and said he was going to reside at Green Village, in the county of Morris, to teach a school and tend store there, [employments that would seem to be rather incompatible.] The witness does not know when he went, except by what he said; did not see him go to Morris county, and did not know of his returning to reside at Drake's till after the election. It appears by the evidence that Conant was in the neighborhood at the time the testimony was taken, and no attempt made to obtain his knowledge of the facts. On this evidence, infinitely more feeble and lame than that adduced in the case of T. A. Drake, the committee rejected the vote of Conant. We ask the House to contrast the two cases.

In the first place, Drake went to his wife and family. Conant did not. Drake became a permanent resident of the place to which he went. Conant did not; he appears to have returned immediately after the election, thus evincing that he did not intend to change his residence. And in Drake's case, his father swears positively that his son did change his residence, and did go to Rahway to reside on the 5th of October; but no such testimony is given in Conant's case; and yet the committee come to directly opposite results in the two cases—that the first was a lawful and the last an unlawful vote. It is scarcely necessary, after this statement, to inform the House that Marshall Conant voted the Whig ticket—a fact to which we are obliged to recur much too often in giving an exposition of the proceedings of the committee.

Robert Greenleaf voted at South Amboy, in the county of Middlesex. at the same election; he voted the Administration ticket. Messrs. Ayerigg and others objected to his vote on the ground of non-residence. John B. Applegate proves that Greenleaf offered to vote at the election in 1838, and he challenged his vote, on the ground that he had not lived long enough in the county. He told

the judges that he had moved his family into the county of Middlesex only a few days before the first day of April, 1838, which he admitted to be true. John Seward proves that his family lived in Paterson, as he heard him say; did not know that he moved there directly from Paterson; they might have been in New-York; knows that his family came to South Amboy in the steamboat, and helped him remove his goods from the boat; he moved into Conologue's house, who lived the next door to the witness. Thomas Applegate proves that Greenleaf moved his family into the county of Middlesex in the spring of 1838, from the county of Bergen, as he thought. He worked at South Amboy the fall before, but at what time the witness does not recollect. Previous to the spring of 1838 R. Greenleaf left South Amboy every two or three months, as witness expected, to go to see his family; has heard him say previous to the spring of 1838 that his family lived in the county of Bergen. This, in the judgment of the undersigned, is, on indisputable principles, a perfectly clear case of non-residence at South Amboy, and yet the committee overruled the objection, and held the vote to be a lawful vote.

John Teats voted in the township of Hardwick, in the county of Warren, at the same election. He voted the Opposition ticket. Messrs. Vroom and others objected to the vote on the ground that he did not reside in the township at the election, though it was admitted that he had resided in the county the year preceding. John L. Armstrong proves that his wife and family resided at Columbia, in the township of Knolton, in that county, in the fall of 1838, at the time of the Congressional election of that year. Witness could not tell how long he had worked for him previous to the election; thinks it was more than one week, but not over two; he remained with the witness after the election till cold weather; he hired him, and calculated to keep him longer, but did not; did not hire him for any length of time, but expected to keep him a year. The committee held properly that the residence of Teats was with his family at Columbia, and that he could not vote at Hardwick. They therefore deducted his vote from the poll of Messrs. Ayerigg and his associates; but the decision of the committee in Greenleaf's case conflicts directly with that of Teats. In both cases the electors were married men, and in both they had families residing in one place while they were laboring in another; and yet in one case the committee held that the elector could vote in the place where he was at work, and in the other case that he could not.

William Helm voted at Newton, in the county of Sussex, at the same election; he voted the Administration ticket. This vote was objected to by Messrs. Ayerigg and others, on the ground of non-residence. John S. Brodrick proves that he knew Helm; never knew him till August or September before the election; did not know how long he had lived in the county; he said he came from the east side of the North river, in the state of New-York, when he came here; did not know when he came from that state; a laboring man, whose principal business was to make stone fence, and was living in the neighborhood of Lafayette at the time of the election. Witness does not know where he is now. John B. Gus-

tin proves that he first saw Helm in the spring of 1838 at Lafayette; hired him to work for him in September following; he then told witness he came from Columbia county, in the state of New-York; he told me so when he came to Lafayette in the spring; he had two bundles with him, and a bag, and appeared as if he had been travelling when witness first saw him. He adds that Helm did not tell him how long he had been in the county; he was laying stone fence about the neighborhood; and the witness understood that he had gone back to the state of New-York. Upon this state of the facts, the committee overruled the objections of Messrs. Aycrigg and others, and held the vote to have been a lawful vote.

Charles P. Marks voted the opposition ticket at Elizabethtown, in the county of Essex, at the same election; his vote was objected to by Messrs. Vroom and his associates, for the same reason. To sustain the objection, the testimony of a Mr. Hatfield is introduced, who swears that he knows Marks; he follows the business of a travelling merchant or pedlar; he is from Connecticut; a single man; prior to the spring of 1838 he left the employ of Kellogg & Halsey, at Elizabethtown, and purchased a wagon of the deponent; went to Paterson, got a load there, and peddled for some one in Paterson, and he never returned here to make it his residence. In opposition to this, M. W. Halsey proves that Marks was in the employ of Kellogg & Halsey, of which firm the witness was a member; his business, from 1835 to 1838, was peddling goods for Kellogg & Halsey, with a one-horse wagon, through the country; his washing, making and mending clothes, was done at Elizabethtown from 1835 to February, 1838; after that time he ceased to be in the employ of the firm. But the witness swears positively that Marks had his washing, mending and making clothes, done at Elizabethtown, and made his home at the house of the deponent up to 1839, and to the spring of 1839, as he thinks. Notwithstanding this evidence, the majority of the committee held that Marks was not a resident of Elizabethtown at the election of 1838, and deducted his vote from the poll of Messrs. Aycrigg and others.

We confidently submit that the evidence in favor of the legality of the vote of Marks is much stronger than that adduced to sustain the vote of Helm; indeed, there are some very significant circumstances against the vote of the latter; his employment, that of making stone-wall, renders it improbable that he should have been in Sussex in the winter of '37-8, when his home was in the state of New-York, and his appearance when first seen by Mr. Gustin, being that of a person who had been travelling, is a sufficient intimation of the truth. He had just then arrived from the county of Columbia, in the state of New-York; but no such facts existed in the case of Marks, and yet the committee held the one, sustained by feeble, and at best doubtful, proof, to be a lawful vote, and the other, in opposition to positive evidence, to be an unlawful vote.

Charles Swallow offered to vote the Whig ticket in the township of Delaware, in the county of Hunterdon, at the same election; his vote was rejected by the election officers on the ground of non-residence. Messrs. Aycrigg and others now claim that his vote was a lawful vote in Delaware, and should be added to their poll.

It appears from the evidence of Swallow that he was a native of that township, was a single man, his father lived there; he had been employed on canals and railroads in various parts of the country for a number of years; but he says "I always considered my father's house my home. I always considered the jobs I was doing as temporary jobs. I had a horse part of the time at my father's when I was absent. I have never been away except when engaged on public works. I always called my father's house my home, for when I was out of employment I always went there." The witness goes into detail as to his various engagements from 1833 to the fall of 1837, showing that as soon as he got through one engagement he would return to his father's, staying weeks and months at a time, till he was re-engaged. He finally returned in the fall of 1837, about two weeks after the election. He has remained at Delaware, residing at his father's, ever since. It should be borne in mind that Delaware was the native residence or domicile of the voter, and it is a settled rule that a domicile once gained, either by birth or otherwise, is never lost till another is acquired. It is difficult to conceive how Swallow could have acquired a domicile all along the canals and railroads which he constructed, but the committee held the vote to be an unlawful vote. We ask the House to contrast this case with the following.

William Baker voted the Administration ticket in the township and county of Burlington, at the same election. Messrs. Ayer and others objected to his vote on the ground of non-residence, it appearing from the testimony of William R. Allen that he was a travelling journeyman shoemaker, going with his kit from place to place, getting work as he could. The first we know of him, he resided at Baltimore; from thence he went to Philadelphia, and appeared at Burlington in May, 1836; remained till the winter following; went to New-York, and in a few weeks returned to Burlington; remained till August, 1837, and then went to Philadelphia and remained till February, 1838, then returned again to Burlington and remained until after the election, and left, finally, the winter after. The witness says: "I saw him during the time he was in Philadelphia. I visited the house where he boarded in Philadelphia at least twice. I saw him at work in Philadelphia in the shop. I know positively that he was residing in Philadelphia at that time. He was once in Burlington, on a visit, during that time; this was about Christmas, 1837. From my own knowledge I do not know that he left any thing in Burlington when he left in August, 1837." It appears that when Baker offered to vote he said that when he went to Philadelphia he intended to return to Burlington, but this was a mere pretence to get in his vote. His employment and manner of life prove, conclusively, that his residence could only be where he happened to be at work. But the majority of the committee thought otherwise, and decided his vote was a lawful vote—or, in other words, Charles Swallow lost his birthright, his residence in the place of his nativity, by going abroad to superintend public works; but William Baker could lose nothing, though traversing all parts of the country, and leading a very unsettled life. Perhaps the majority of the committee can explain why they made such a distinction between the two cases.

But not only have the majority been inconsistent in their deductions of fact, but they have been equally so in the application of the rules of evidence to the cases before them ; or, in other words, evidence which they held to be good and sufficient when offered by one of the parties for a specified purpose, they held to be incompetent and inadmissible when offered by the other, for the same purpose. This the undersigned will illustrate as follows :

Ira Baldwin voted the Administration ticket at Caldwell, in the county of Essex, at the same election ; Messrs. Aycrigg and others objected to his vote on the ground of non-residence. Peter Kerstead, a witness on behalf of Messrs. Aycrigg and others, proves that Baldwin told him that "he had not been in the place long enough by a month to make him a legal voter ; that he had been absent a month, and that he got in his vote by making them believe it was a Whig ticket, otherwise he would not have succeeded." William G. Crane, a witness adduced also by the same party, proves that Baldwin told him that "he was not entitled to vote ; he lacked a month, or near that, to make him a legal voter ;" so that Messrs. Aycrigg and others proved by two witnesses an express declaration by the voter that he had not resided the requisite period in the county ; but the committee overruled the objection, on the ground that the evidence was mere *hearsay*, and they held that some other proof should be given of the non-residence of Baldwin than his declaration ; and, therefore, they refused to deduct his vote from the poll of Messrs. Vroom and others. But this rule only lasted till the committee reached the case of

Jerome B. Pratt, who voted the whig ticket at the township of West Milford, in the county of Passaic, at the same election. His vote was objected to by Messrs. Vroom and others on the ground of non-residence. The deposition of Samuel S. Gregory was produced, which proved that Pratt told him he had not resided in the county of Passaic one entire year previous to the election ; had resided in New-Jersey more than one whole year altogether, but had resided out of the state within the last year preceding the election ; he inquired of the witness as to the law on elections ; witness then informed him that a voter was required to reside within the county one whole year previous to the election to entitle him to vote ; Pratt then said, if that was the case he supposed he was not a legal voter, as he had resided out of the state within the last year, and had he known the law he would not have voted. Such, in substance, was the evidence ; it was nothing but the declaration of the voter as to his right. The committee held the evidence to be competent, and deducted the controverted vote from the poll of Messrs. Aycrigg and others. A similar decision was made by the committee in the case of John McManninan (vide printed report of evidence, folio 126,) by which Messrs. Vroom and others proved the illegality of a vote ; so that it would seem that the admission of voters is good in favor of one of the parties to establish non-residence, but not good for the same purpose in favor of the other. Many other cases of an incongruous application of the rules of evidence might be referred to, but the purpose of the undersigned will be sufficiently answered by citing the above as examples.

We desire next to invite the attention of the House to cases in which the parties respectively objected to votes on the ground of *pauperism*, or for the reason that the voters whose right was questioned had neither paid a tax nor been assessed in conformity to the laws of the state. And here, if we mistake not, we shall find the same irregularity and inconsistency which pervades other branches of this investigation.

According to the Constitution or colonial ordinance before referred to, the possession of £50 clear estate was necessary to the exercise of the elective franchise, but this has been modified by subsequent enactments, as follows : (Revised Laws, 741.)

" Sec. 5. Every person who shall in other respects be entitled to a vote, and who shall have paid a tax for the use of the county or the state, and whose name shall be enrolled on any duplicate list of the last state or county tax, shall be adjudged by the officers conducting the election to be worth £50 money aforesaid clear estate.

" Sec. 6. That no person shall hereafter be deemed by the officers conducting the election to be a qualified voter who has not either paid a tax, or whose name is not enrolled on the duplicate as aforesaid, except in case of persons removing from one township wherein they have paid a tax to another township in the same county, or of persons who have been inadvertently overlook-

ed by the assessor, in either of which cases such persons claiming a vote, and being in other respects qualified, shall be admitted; and in the case of persons who have been inadvertently overlooked by the assessor as aforesaid, their names shall be immediately entered on the tax list."

The undersigned have felt much embarrassment in giving a construction to these sections, and they cannot but feel much surprise that the good people of New-Jersey should have suffered the invaluable right of suffrage to be involved in all the perplexity and doubt of obscure and contradictory phraseology. But on full consideration they are disposed to give the sections a construction conforming to what they understand to be the practice of the state, and to hold that if a person has either paid a tax, or has had his name enrolled on any duplicate list of the last state or county tax, he is entitled to the elective franchise, as he is, also, in the excepted cases specified in the last section.

It is usual in New-Jersey for a person whose name has not been enrolled, and who desires to exercise the elective franchise, to appear at the polls and to demand the enrolment of his name, which is always done under the idea that it has been "*inadvertently overlooked*" by the assessor; and thus, by the payment of a trifling tax, the elective franchise is put within the reach of every citizen of New-Jersey. But it would obviously be improper to enrol a pauper. It cannot be supposed that the name of such person was "*inadvertently overlooked*;" and it would be absurd to call on a man to pay taxes who cannot do so, and if he could, to whom the money would be forthwith returned for his support. Hence we deem it settled that paupers cannot vote in New-Jersey. This brief exposition of the laws of that state will enable us to contrast some of the cases under this head, and the House can judge whether the committee were any more successful in administering "equal and exact justice" to the parties in this, than they were in the other branches of this inquiry.

Isaac Jobes voted the Administration ticket in the township of Chesterfield, in the county of Burlington, at the election of 1838; his vote was objected to on the ground of pauperism. William Tiel was examined as a witness, who proves that Jobes had not paid a tax for some years back, as he believes; reputed and considered in the township to be a pauper; thinks he had been in the county house before the election of 1838; on reflection is confident that he had been; that he sent him there himself as overseer of the poor; took him there on the 5th day of May, 1835, and saw him there afterwards; has every reason to believe that Jobes was a pauper at the election of 1838; he could not say that he had seen him at the county house two years before the election; his name was not on the regular part of the duplicate, and there being no cross mark against his name, it would seem that his tax had not been paid. Isaac Jobes himself was examined, and swears that he did not pay his tax in 1838; does not know who paid it. John Hitchins gave him the receipt and he expects he paid it; took the receipt home and does not know what became of it; has been in the county house; was there in 1838, but had his regular discharge the last Tuesday in April; went in there the forepart of the previous winter, also last winter; went in after new-year's and left the forepart of March last, (1840;) has been in the county house four times, but is able to support himself in the summer months. This is a very clear case of pauperism, one in which the party takes the tenant of the poor house to the polls and pays his tax in consideration of getting his vote. Jobes was obviously not qualified, but the majority of the committee overruled the objection and held his vote to have been a lawful vote.

James Hoffman voted the Whig ticket in the township of Frankford, in the county of Sussex, at the election of 1838. Messrs. Vroom and others objected to his vote on the ground of pauperism. Matthew J. Williams proved that he said he never paid a tax. He is a very poor man. His family were at the poor-house in June, 1838; he was not at the poor-house himself. His family staid about a week. Testimony is given by Guy Price and Samuel Price to the same effect, and there is no doubt as to the poverty of Hoffman; that his family had received some relief from the public, and, though he himself had not, the committee held the vote to be unlawful, and deducted it from the poll of Messrs. Aycrigg and others. We do not wish to be understood to complain of this decision, though it is manifestly a questionable case of pauperism; but if this be right, that of Isaac Jobes was grossly erroneous—a man who is undoubtedly poor, and the tenant of a poor-house during the winter both before and

after the election, gives an Administration vote, and the majority of the committee say it is a good vote; and another person, who never saw the inside of such a building, and who merely had his family there for the brief period of one week, gives an Opposition vote, and the same majority pronounce it an unlawful vote, or, in other words, a weak case becomes a strong one if the vote be cast one way, and a strong case becomes the reverse if it be cast the other.

Nathan F. Randolph voted the Administration ticket in the township of Woodbridge, in the county of Middlesex, at the election of 1838. Messrs. Aycrigg and others objected to his vote on the ground of pauperism; they prove by Elijah Hewit that he was acquainted with Randolph; that he came to the poor-house, under the legal order of the overseer of the poor of the township of Woodbridge, four years ago last fall; that he came in October, 1835, and remained three months; he has no property whatever, and is supported by his friends; has seen his partisans pay his tax twice at the elections, once since the election in October, 1838, and once before. No other testimony was adduced; the committee overruled the objection, and held the vote to be a lawful one.

Enos Dickerson voted an Opposition ticket in the township of Jefferson, in the county of Morris, at the same election. Messrs. Vroom and others objected to his vote on the same ground; they examined Dickerson himself, who proves that he had not paid any tax in Morris county for the years 1837 and 1838, and does not know that he paid any tax for four or five years, except 1839; but that he was duly assessed for 1838. Joseph Dickerson swears that E. D. is a poor man. He has been assessed in the township of Jefferson for the last ten years or more, but the township committee have relieved the constable from the payment of his taxes for a number of years past. This was the whole proof, and the committee sustained the objection, and deducted the vote from the poll of Messrs. Aycrigg and others.

We beg the House to contrast these cases, and observe how widely different has been the treatment which the parties to this controversy have received at the hands of the committee. In both cases the voters were poor men, doubtless quite poor. In Randolph's case it did not appear that he was assessed in 1838, and, if he was, we have good reason to believe that the tax was paid, as at other times, by his political friends to get his vote. In Dickerson's case, he was regularly assessed, though the tax was afterwards remitted by the township authorities. In the former case, the voter had actually been the tenant of a poor-house. In the latter he had not. And Randolph was supported wholly by his friends, and Dickerson, for aught that appears, supported himself. We confidently submit that the indications of pauperism were much stronger in Randolph's case than in that of Dickerson, and yet the vote of the first was held to be a lawful, and that of the last to be an unlawful vote. We maintain that the disposition which the committee made of the cases was clearly unjust and erroneous. Many other cases of a similar character coming under the head of pauperism might be referred to, but it is believed to be unnecessary.

The undersigned would observe, that early in the investigation a question arose as to the character of the proof which should be received and deemed sufficient to enable them to appropriate such of the votes as they might determine to have been unlawful. In New-Jersey the right of ballot obtains as in most of the states of the Union. If an unlawful vote be cast, how are we to ascertain who had the benefit of such vote? It is obvious that, in many cases, it will be impracticable to obtain positive proof. In some cases the voter may be willing to appear and disclose the fact under oath; in other cases it may be in the power of the party to produce a witness who can swear to the character of the vote given; but in many more, no evidence of that description can be obtained to ascertain the fact in controversy. It seems to the undersigned to be indispensable to receive secondary evidence to this point—such as the declaration of the voter either at the election or soon after, and also proof of his political character, which, when well defined, will be a sufficient guide to the truth. But we ought to be very careful not to receive and act upon evidence of an equivocal character which may have been created or manufactured for the occasion. In adopting these views there was a good degree of unanimity in the committee, but the majority have been by no means consistent in carrying them out, as the following cases prove.

Peter Snyder voted the Administration ticket at Millville, in the county of Cumberland, at the same election, and Messrs. Aycrigg and others proved by his own testimony that he was an alien and a foreigner, unnaturalized. The only question was as to the ticket he voted. He swears that he voted four or five times before the election in 1838; that he then voted the democratic ticket;

cannot tell whom he voted for; cannot read English; does not know who gave him the ticket; cannot tell why he wanted to vote the democratic ticket. At the time he voted he lived at Schettersville, and supposes the other men at Schettersville voted the same ticket he did. It appears from the evidence that a large number of aliens went from Schetter's factory to the polls at Millville and voted. John Frank testifies as follows: I took some pains in getting the men employed by Mr. Schetter to the polls at the election. I gave tickets to a number of them, and gave them the Van Buren ticket. Afterwards he adds, "I suppose that all the unnaturalized foreigners (except Philip Schetter) from Schetter's factory voted the Van Buren ticket. I think I had a right to know, from their expressing what kind of ticket they voted." This was the proof. It seems to be explicit. The positive oath of Snyder that he voted the Administration ticket was confirmed by the little less positive testimony of Frank; and yet the committee could not see in such testimony any sufficient evidence of the character of the vote of Snyder. They refused to deduct it from the poll of Vroom and others, and left it a floating vote.

Wm. J. Ayres voted in the township of Upper Alloways Creek, in the county of Salem. He was indisputably an illegal voter, by reason of non-residence—and the only question submitted to the committee was, as in the last case, as to the character of his vote. John D. Ayres was examined as a witness. He says, "I don't know what he voted, but my supposition is he voted the Whig ticket." And afterward he adds, "I do not know of my own knowledge what ticket he voted. I don't know any thing about it at all. I said before, and again repeat, my supposition is that William voted the Whig ticket. He goes with the Whigs. I am what is called a Van Buren man—full blooded." Ellis Ayres deposes as follows: "I asked him (Wm. J. Ayres) yesterday what ticket he voted. He said he voted the Jackson ticket. I gave him two tickets, one of each kind, as we were going to the election. I believe he voted one of the tickets I gave him. He put one in one pocket, and the other in his other pocket. I understood him to mean by the Jackson ticket the one I termed the Jackson ticket when I gave it to him. It was the full-blooded Van Buren ticket I gave him."

It should be known that this testimony was taken at the instance of Messrs. Vroom and others, but those gentlemen did not venture to submit it to the committee. It was brought forward by Messrs. Ayerigg and others, and they claimed that the vote of Ayres should be deducted from the poll of their competitors. It will be observed, on the other hand, that there was no other evidence that he voted the Opposition ticket, except the mere supposition of J. D. Ayres that he voted the Whig ticket, without a single fact to support it. What the witness means by the voter "going with the Whigs," does not appear. There was no proof that his reputation was that of a Whig, and no declaration before the election that he intended to vote the Whig ticket, or, after, that he had voted the Whig ticket. The only affirmation which he in fact made on the subject, was to Ellis Ayres, that "he voted the Jackson ticket." After the decision of the committee in the case of Peter Snyder, every one must be prepared for the result—that this was a floating or doubtful vote, that could not be appropriated. Not so; the committee could see in such proof that Wm. J. Ayres voted the Whig ticket, and, incredible as it may seem, they deducted his vote from the poll of Messrs. Ayerigg and others. So that, on the question of deduction of a vote from the poll on one side, they cannot discern in the positive oath of a voter, fortified by collateral proof, how he voted; but, on a question of deduction of a vote from the other side, they can see this in a mere supposition or conjecture in opposition to the declaration of the voter himself, and not supported by a single fact. What more need be said to illustrate the inconsistencies which have marked the course of the committee?

But we now desire to call the particular attention of the House to the all-controlling principle which pervaded the deliberations of the committee, and which was ingeniously adapted to favor the "foregone conclusion" that the Opposition claimants are not entitled to the contested seats. The House will recollect the position of the controversy at the time we commenced the inquiry into the facts. The majority of the committee had previously reported to the House that the Administration claimants had received at the poll a majority of votes of from thirty to one hundred and ninety-eight. Hence it will be perceived that the party having such majority were interested to make the proof of illegal votes as difficult as possible. Any general rule, the effect of which, though administered with impartiality, should be to increase the embarrassment, would obviously operate in their favor; and we ask, what rule could be better adapted to the end

suggested than that of giving an inordinate effect to the reception of a disputed vote at the polls? This idea was a prolific source of difficulty to the committee, and, what is of more consequence, of flagrant injustice to one of the parties. One of the many progeny of this suggestion was the legal absurdity that the party objecting on the ground of alienage must, under all circumstances, prove not only that the voter was an alien born, but, in addition, that he had never been naturalized. The committee knew at the onset that Messrs. Ayerigg and others expected to prove many alien votes to establish their right to the seats. This was set forth fully in the exposition of facts which they submitted to the committee at an early stage of the proceedings. The House cannot fail to observe how admirably the rule of negative proof is fitted to embarrass one side of this controversy, and to fortify the position of the other side; but, nevertheless, it is the duty of the party thus embarrassed to submit to the evil, if the rule itself be founded in law. But we insist that it is not so founded. No precedent can be found of the application of such a rule to such a case. The party having the affirmative of the issue takes the burden of proof. A foreigner comes to the poll and votes; you can prove that he is such, but how can you prove that he has not been naturalized? Perhaps he may be willing to testify, and then you may prove the fact by his own oath; but suppose he is dead, or has removed away, or chooses to stand mute, he cannot be put to the question, he cannot be compelled to criminate himself. The rule imposes on the party objecting the necessity of searching all the records in the Union, and getting the testimony of every record-keeper to prove the fact. This is manifestly impossible. No man in his senses can believe that any such rule exists.

It is a principle of the law of evidence "that the affirmative of the issue must be proved, and he who makes an assertion is the person who is expected to support it, before he calls on his opponent for an answer." And again: "The burden of proof lies on the person who has to support his case by proving a fact of which he is believed to be ignorant."—Vide Rogers's Law and Practice of Elections, p. 114-117.) To suppose any member of the committee to be ignorant of a rule of law so old and universal, and founded in so much good sense, would be to justify his integrity and maintain his impartiality at the expense of his judgment, and every qualification required for the proper discharge of the duties of a Committee of Elections. We disclaim all design of charging the course adopted by the majority to corrupt intentions, but we are very reluctant to embrace the other branch of the alternative, and conclude, therefore, that some strange prejudice must have taken possession of the mind and led the judgment captive at will.

But not only did the committee adopt a very extraordinary rule, but they applied it to the case in a very extraordinary manner, and thus essentially aggravated the evil which that rule was adapted to inflict. For they hold votes to be lawful on account of the absence of proof of non-naturalization, in cases where,

1st. The election officers decided that aliens had a right to vote according to law, and avowedly admitted them to vote on that ground.

2d. Where aliens were summoned before the magistrates who took the evidence, and where they refused to attend; or, if they attended, stood mute as to their right.

3d. Where the two circumstances above indicated were combined, as they were in many of the cases submitted to the committee.

4th. Where aliens produced at the polls, as evidence of naturalization, a declaration of an intent to become naturalized at a future period, which we all know is a mere preliminary step to, but is not naturalization itself.

In many cases the committee held votes to be lawful where all the above circumstances were united against the voter; and we should be wanting in duty to the contesting parties, to the People of New-Jersey, and to the whole country, if we did not bring the conduct of the majority, in this particular, distinctly to the notice of the House.

In the township of Newton, in the county of Sussex, alien votes were received not only at this, but at previous elections, for a great number of years, and two of the judges, in the presence of the third, declared at this election that they considered such votes legal. It is also proved that, at this election, they received the votes of a large number of such persons, and among them that of one about whom there was a contest, and who acknowledged that he had been in the country but little more than a year. At this poll, among other foreigners, Moses Robinson, James Ennis, and Luke Flood voted for Messrs. Dickerson and his associates. Robinson and Flood were subpoenaed, but did not attend. Ennis was out of the

state. All are proved to be foreigners ; and a witness swears, in respect to Ennis and Flood, not only that they are foreigners, but also that they are reputed to be aliens, and he believes they are so. The committee considered this evidence insufficient, and decided the votes to be legal.

In the township of South Amboy, in the county of Middlesex, twenty foreigners came forward to vote, and presented what they supposed to be naturalization papers, but which, upon examination, turned out to be only declarations of intention to become naturalized ; some of which bore date but a few days previous. These papers are proved to have been all of the same character—all mere declarations of intention. Nine of these men have become naturalized since the election, as was proved by the production of copies of their papers of naturalization, and their votes were thrown out by the committee as illegal. But the votes of the other eleven, who have not yet become citizens, were decided to be legal. The decision of the committee, in this case, requires not only evidence that the voter is a foreigner, that he produced as papers of naturalization mere declarations of intention, but also the impossible negative proof that he had no others, although there is not a shadow of pretext that he had them. And this, too, when the voter himself refuses to appear and give testimony.

In the township of Millville, in the county of Cumberland, the board of election officers decided at this very election, in express terms, that foreigners not naturalized were entitled to vote, and the votes of thirty-one such persons are believed to have been received ; seventeen of these went from a single glass manufactory.—Philip Schetter, who has been clerk of the manufactory, swears that they were all unnaturalized foreigners ; that he has heard all or most of them say they were not naturalized ; and, again, that he has frequently heard the whole or nearly all of them say that they were not naturalized. John Frank, a manager in the manufactory, who assisted in getting these men to the polls, speaks of them in general terms, as unnaturalized foreigners ; and adds, that none of the foreigners of that place were naturalized, so far as he knows ; that he heard some of them testify at Trenton that they were not. The clerk of the election swears to his belief that they were unnaturalized foreigners, though he does not know it of his own knowledge. Ten of these men still remain in the county, were produced, swore that they were not naturalized, and their votes were declared illegal by the committee. The votes of three men, who are out of the state, were rejected on proof of their having sworn to the same fact at Trenton, before a committee of the Legislature ; but the votes of the other four, three of whom are out of the state, and the fourth not to be found, were decided to be legal. It is not a little singular that the vote of the only remaining foreigner, who went from the same establishment, and who is himself produced, swears unequivocally that he has been naturalized in Tennessee, and fully accounts for the absence of his papers, was rejected by the committee as illegal. Whether the fact that he alone, of the whole eighteen that went from that establishment, voted for the Whig candidates, will account for this anomaly, we leave for the House and the country to determine. The undersigned would deprecate the establishment of any rule, the effect of which would be to embarrass in the least that portion of our fellow-citizens of foreign birth who are entitled to exercise the elective franchise. It is no hardship to them to require the production of their papers, which can, in nine cases out of ten, be readily done ; or if that is attended with inconvenience, they can at least appear and make oath to the fact of naturalization. Any other rule than this opens the door for the perpetration of innumerable frauds, and at the same time throws in the way of investigation so many obstacles, that the existence and extent of such frauds can never be detected. It gives to a corrupt board of election officers the power of conferring all the rights of citizenship on whomsoever they please ; on aliens just landed, as ignorant of our language as they are of our institutions, and fit only to become the prey of evil men. This we have every reason to believe was extensively done in N. Jersey at the election of 1838 ; and the majority have adopted and so applied rules of investigation and evidence as to establish and sanction the whole.

We conceive that such a precedent is a most flagrant violation of the Constitution and laws of the United States. By the Constitution the power is conferred on Congress to establish a uniform rule of naturalization, and that body has exercised the power by enacting laws for the purpose ; but if a board of election officers can admit aliens to vote, and then a committee of elections will say we will presume them to be naturalized until the contrary is proved—we will presume it, tho' they themselves refuse to show their papers, or to say whether they have been naturalized or not—we will presume it, though they exhibit as evidence of their citizenship only declarations of an intent to become naturalized, without pretending

that the act had been consummated: if a committee is to do all this, and much more, and the House is to sanction it, then we submit we have no uniform rule of naturalization, but the high immunities of an American citizen can be exercised and enjoyed by any stranger at the good-will and pleasure of any board of heated partisans who are more intent on gaining the paltry advantages of an election triumph than to execute, in good faith, the duties imposed by the Constitution and laws of their country. But the foregoing is not the only provision of the Constitution which the committee have nullified. "Each House shall be the judge of the elections, returns, and qualifications of its own members." The House has already passed judgment as to the returns and qualifications of the New-Jersey members—whether correctly or not, is not for us to say. Nothing now remains but a question of election. How is this to be settled? According to the opinion of the majority, by applying to the case a series of presumptions which must render all hope of reaching the merits vain and nugatory: or, in other words, it is proposed that the House shall blindly ratify all that the election officers have done—to make their judgment against law, justice, and right, the judgment of the House, and conclusive on the parties. The manifold evils which must result from such a course—on the one hand holding out strong temptation to perpetrate frauds in elections, on account of the impunity with which it may be done, and, on the other, by deterring parties aggrieved from every effort to detect them by reason of the difficulties thrown round the subject—are too obvious to need comment. The undersigned think that great injustice was done by the committee in rejecting, on one side, for technical defects, evidence in other respects competent, while, on the other, they received and acted upon evidence taken *ex parte*, without notice or an opportunity of cross-examination.

Evidence taken by Messrs. Ayerigg and others in the county of Somerset, when the other party attended and cross-examined the witnesses, was rejected because there was not eight days' notice, and the attornies differed in their construction of the terms of a verbal agreement by which a shorter notice was to be received.

But the evidence taken on the part of Messrs. Vroom and others in the county of Mercer, at a place different from the one mentioned in the notice, in the absence of the other party and without any opportunity of cross-examination, was received as competent, contrary to the agreement of the parties as well as the ordinary and well-known rules of law. We might state other facts of a similar character, but time will not permit. We trust the subject will not escape the notice of the House in the final disposition of the case on its merits.

The undersigned are of opinion that the committee have not attended sufficiently to the proofs adduced by Messrs. Ayerigg and others of numerous frauds and irregularities at sundry polls at the election of 1838, particularly at South Amboy in the county of Middlesex, at Millville in the county of Cumberland, at Newton in the county of Sussex, and Saddle River in the county of Bergen.

It is, in the judgment of the undersigned, of great consequence to the purity of the elective franchise and the perpetuity of our free institutions, that such a subject should be thoroughly investigated, and yet the committee have suffered nearly their whole time to be engrossed by the canvass of individual votes—devoting to this all-important subject only a few brief hours.

The House can hardly fail to learn with surprise that they left several of the most important questions under this head wholly untouched. The undersigned cannot advert to the facts with particularity, but would observe that there is much in the evidence to indicate that there was a concocted scheme to carry the election in 1838 in favor of the Administration ticket by the introduction of unlawful votes. On no other hypothesis can we account for the fact, that it should have been discovered all at once in distant and remote parts of the state (and uniformly in townships where the election officers were friendly to the Administration) that aliens or unnaturalized foreigners had a right to vote. In South Amboy nineteen such aliens were admitted, in Millville twenty-seven, in Newton fifteen, and many others in various parts of the state, who voted the Administration ticket, and the election officers supported the Administration.

Not the shadow of an argument was adduced before the committee to justify such conduct, and we cannot believe that the election officers acted under a misapprehension of the law: their motives were too obvious to need comment. They seem to have been blessed with a remarkable prescience of what would be the action of a Committee of Elections on votes once got into the ballot-box, no matter how illegally, and to have governed themselves accordingly. We would state, in addition, that in the township of South Amboy a Whig inspector was duly elected by a majority of the people present at the time prescribed by law, but

was not permitted to act. The moderator of the town-meeting, after such choice, took upon himself to proclaim a new election, and kept the same open until a sufficient number of his political friends were assembled to secure the election of the Administration candidate. This, of itself, would seem to us to be sufficient to render the election, so far as this township is concerned, irregular and void.

It appears, from proof which we deem quite satisfactory, that thirty-two votes were deposited in the ballot-box at Saddle River for the Opposition candidates. The voters themselves swear to it in positive terms, and yet, from some cause, when the votes came to be counted off, the number appears to be only TWENTY-FOUR. We do not intend to cast an imputation upon the inspectors of the election; they are, doubtless, respectable men; but the House can hardly fail to be impressed with the fact that evidence is adduced as to the good character of the inspectors, but none at all as to the clerk, and, as he had charge of the ballot-box, he can doubtless explain the rule of REDUCTION, which seems to have operated so mysteriously in Saddle River township.

It appears from the evidence that, in the township of Newton, in Sussex county, besides the admission of alien votes, the names of no less than one hundred and twenty-nine persons, some with merely a nominal tax, were added to the duplicate at the time of the election, to enable such persons to exercise the elective franchise. What proportion this number bears to the whole vote of the township the undersigned do not certainly know, (as the county returns sent up among the other evidence have been mislaid and not printed,) but we understand it is somewhere about one-sixth of the whole number. None can be added, according to the laws of the State, except such as were "inadvertently overlooked" by the assessor in making out the list.

Now, it is incredible that such an officer, whose duty it is to exercise the greatest diligence in ascertaining the names of taxable inhabitants, should accidentally overlook ONE-SIXTH of the people of the township. This fact throws great discredit on the poll at Newton, and is, in our judgment, quite sufficient to make it the duty of the opposite party to give some explanation of so extraordinary a transaction.

But the undersigned cannot enter any further into the details appertaining to this branch of the subject. They hope the House will give it a thorough scrutiny.

It is proper that we should here notice a very singular occurrence which took place during the progress of this business. A few days before the close of the labors of this committee, three of the undersigned, worn out with this protracted investigation, and despairing of effecting any good, or of preventing any injustice by continuing to act with the committee, and admonished by the refusal of the majority on a former occasion to allow them even one day to make a counter-report, abandoned the committee room to prepare this statement, and to attend to some urgent calls upon their time. Most of the contrasted cases had been prepared as above given, with a view of exhibiting to the House the gross inconsistency and palpable injustice which marked the proceedings of the committee, when the three members of the minority, above alluded to, were surprised to learn that the majority, after having examined all the votes, and ascertained that the Administration claimants, upon the principles adopted as before stated, not only would be enabled to retain their seats, but that the majority given in their favor at the polls would to some extent be increased, had gone back and reconsidered and reversed the decisions of the committee in a few of the flagrant cases of irregularity, inconsistency and injustice.

To do this they suspended the rules (being those of the House itself) which the committee had, at the outset of the investigation, adopted to govern its proceedings, and having thus gained access to the record, they undertook to blot out some of the dark stains with which it is disfigured.

But the hope is vain and futile. To what purpose is it that the majority reverse as they did the strange decisions which they originally made in the cases of John McConaghy, Charles T. Pool, and Charles P. Marks, after they had discovered that the disposition of those cases was wholly immaterial. No; repentance and reformation came too late; the spirit disclosed by the cases of McConaghy, Pool, and Marks had characterized the investigation from beginning to end. They had been permitted to stand as precedents, and to carry along with them a large train of cases of the same general character. They had operated with other causes to awaken in our minds sensations which it would be difficult to describe, and had induced three of us to abandon the committee room.

If the majority suppose that they can thus escape the responsibility of having made those decisions, they will find themselves mistaken.

They did not carry the good work far enough; they should have reversed the decisions in a large number of other cases not less flagrant, by which the result as to some of these parties at least would be entirely changed.

Besides, the House decided, during the present session, on the pilotage question from New York, that a committee has no right to reverse, reconsider, or annul a decision or resolution which they have once made or adopted; and though the undersigned did not concur in that view of congressional law, yet the vote of this House was at least binding on the majority of this committee; so that, on every ground, and particularly for all purposes of responsibility, we regard the original decisions of the committee in the reversed cases as still subsisting and binding. But whether they are so or not, we do not deem important, as a host of other cases remain, which imperiously demand revision by a tribunal of plenary powers—by the House itself. We have already stated that three of the undersigned were constrained to abandon the committee room; the other member of the minority remained steadily at his post, little more than a spectator of the doings of the majority, with no power to do good or prevent evil, till he was brought to the hour of ten o'clock in the evening of the 11th instant, when, finding that the majority had resolved to have a midnight session, and that his physical capacities for endurance were completely exhausted, he, also, was obliged to leave the case to its fate. What took place after that, the undersigned do not know in such manner as to make it proper to state it; but we have only to suppose a case in which a standing committee of the House continues its deliberations in desecration of the sacred Sabbath, with a bare quorum present, not mentally but corporeally; maintaining their vigils with listless impatience, and thus forcing an oppressed and much injured party to abandon the vindication of his rights, and we shall probably form some conception of the manner in which grave and important questions can be settled, that are in a high degree interesting to the people of an entire State.

The undersigned would not do justice to a highly meritorious public officer if they failed to notice the calumnious imputation attempted to be cast upon the character and conduct of the Executive of New Jersey, through the testimony of Daniel H. Ellis, which has been spread before the House and country with a view to create the impression that he had prostituted his station and office to partisan purposes, and had pursued a very partial, unfair, and disengenuous course to favor one of the parties to this controversy. But the allegation of Ellis has been shown, by the oaths of three credible witnesses, to be utterly false; and Ellis himself, after detection, has, by a volunteer affidavit, put in a plea in avoidance of his slanders, on the ground of mistake. We have only to regret that, if those who have preferred so serious an accusation against Governor Pennington did not know it to be false, they did not, at least, take some pains to ascertain its truth before they ventured to make the charge, particularly as that gentleman seems to have acted, under very trying circumstances, with singular fidelity to the obligations imposed by the laws and institutions of his State.

But we need not dwell on this subject, for what has a public man to fear, no matter how much his conduct may be misrepresented or his motives traduced, when he is sustained by conscious rectitude, and renewed expressions of the confidence of a generous and enlightened People?

Much censure has been cast upon the clerks of Cumberland and Middlesex because the returns of the votes from the townships of Millville and South Amboy were not included in their general lists forwarded to the Governor; with how little justice, the following facts will show. The Millville return was made to the Clerk on the 13th of October, between the hours of "TEN AND ELEVEN" in the afternoon; and as the law of New Jersey is positive that the return shall be made to the clerk "before five o'clock of that day," and he is then at five o'clock to make his general list to be transmitted to the Governor, of course, he could include in that general list no returns, except such as were received "before five o'clock." The clerk had no discretion. He proceeded according to law, and is in no way censurable. The blame, if any, belongs to the election officers. The return from South Amboy was made by a judge and inspector, and by Jas. M. Warne, representing himself as an inspector: his name, however, as such, does not appear in the list of town officers, nor was there any certificate or other evidence of his election as inspector filed with the clerk, as the law requires, if he had been duly elected to supply a vacancy, which we insist he was not.

The law requires the certificate of such election to be filed with the clerk within three days. None such was ever filed. The certificate was presented to the clerk ten days after the election, and after the general list had been made out and

sent to the Governor. Of course, as the return was not made according to law, the clerk could not receive it, especially in a case like South Amboy, where the election of this very inspector was disputed as illegal and fraudulent, and where he and those who acted with him decided to receive alien votes, and actually did receive a number of such. The evidence adduced to sustain the charge of fraud against the clerk of Middlesex very clearly disproves the whole charge, and his conduct, like that of the clerk of Cumberland, was strictly in accordance with the law, and in no wise censurable, unless the refusal to violate the law in order to receive an illegal return, including a number of alien and illegal votes, be censurable. If we were disposed to indulge a censorious disposition, it would not be difficult for us, on the other hand, to show from the evidence that the conduct of the clerks of Somerset, Burlington, and Monmouth, all friendly to the Administration, was, at this very election, quite reprehensible; but time will not permit.

But the question as to the propriety of the conduct of the clerks of Middlesex and Cumberland is wholly immaterial, as our object is, or should be, to ascertain which of the claimants received a plurality of the lawful votes of New-Jersey. The idea that these gentlemen are responsible for the disfranchisement of the state, and for the exclusion of five-sixths of her delegation from the Hall during much of the session, by which the authority of her laws has been spurned and her dignity trampled in the dust, is too peurile to be worthy of notice or comment.

The undersigned will now proceed to state the result to which they have come on a careful examination of the case. If we were at liberty to take into consideration the whole proof submitted to the committee, we should have little or no doubt but that the entire Opposition ticket would be found to be duly elected; but excluding the mass of evidence which was rejected by the committee on grounds merely technical, we are clearly of opinion that Messrs. Charles C. Stratton, John P. B. Maxwell, and William Halsted, of the Opposition ticket, and Messrs. Peter D. Vroom and William R. Cooper, of the Administration ticket, were duly elected members of the 26th Congress by a plurality of the lawful votes of the People of New-Jersey.

We find that from the polls of Messrs. Ayerigg and his associates the following votes should be deducted, which we were of opinion were unlawful votes, viz.

John Udy, John Whitehead, Wm. C. Eyring, George Dilts, Thomas Simpson, J. W. Cortel-you, Henry T. Tanner, James Skinner, Chester Morey, Garret A. Cook, Rensselaer Dockerty, Peter Meleck, John T. Bray, John McMarriman, Lorenzo D. Cummins, John Teats, Lewis Stumpf-el, Frederiek M. Querren, John Byerly, Gilbert Elliot, John S. Townsend, John W. Loder, John Colyer, John Slaughblower, James B. Bolton, Ebenezer Perry, James Kyle, Robert More, Samuel Knox, John Parr, Samuel Lewis, Thomas Gochir, Morgan W. Spade, Hezekiah Ewan, Joseph Merron, John Wright, Frazee Griffen, Abraham J. Ricker, Jacob Massaker, Wm. Massaker, John Freeman, Isaac J. Jacobus, Henry Myer, Charles A. Bedell, Richard Jones, Amos Price, Andrew Wade, Sandford Hicks, Ezra Hill, Daniel Matthews, George Addams, William W. Black, Barney Gallagher, Isaac Burgey, Miles Jonson, Artemas Anderson, David Doiand, Henry Thornton, John A. Cadmus, Adam Potter, Andrew Parsons, William Mitchell, Abraham Massaker, Nathaniel Crook, John M. Robinson, John Foy, Thomas Blydenburg, William Brown, John G. Conover, Alexander Henderson, David Anderson, Felix Eyde, Wm. C. Parsons, Joseph E. Oliver, Andrew Cassidy, James Hutton, Thomas Hutton, Richard Davis, Samuel Orr, David Wood, Daniel Bennet, and Benjamin Long—being in all 82 votes.

To the votes of the claimants should be added the votes of Charles R. Swallow, Wm. Weller, James G. Moore, Peter Swartz, James Teats, Aaron Vanderhoof, James Blauvelt, James Bell, John Carpenter, Thomas Brown, Daniel Swartz, Thomas Cadwallader, jr., Elijah Swartz, and Nelson Brown—being 14 in number, whose votes were illegally rejected at the polls. Also, the seven votes not counted at the polls of Saddle River; and to Maxwell and Halsted the vote of Asher Atkinson.

We find that from the poll of Mr. Vroom and his associates the following votes should be deducted, which we are of opinion are unlawful votes, viz. Benjamin Yougher, John McConaghy, Abraham Klotz, George W. Morgan, Charles Parks, Moses Ammerman, Alexander Luets, J. Beck, Nicholas Arrowsmith, Abramam Bryan, Thomas A. Drake, John I. Buck, Henry R. Doty, Herbert Smith, John Bodine, Thomas Warner, Matthew L. Ribble, Hugh W. Holloway, Nathan Bennett, Francis Anthony, William Gulic, James Wamsley, Wm. Senreman, E. Patterson, Robert Martin, Hugh Cochran, Wm. Carney, Patrick O'Neil, John Gaffany, Wm. McClintoek, David Welsh, George Stephens, Dennis Cochran, Warren Wells, Andrew Kinsley, George Walker, Wm. Gray, Patrick Ferral, Theophilus Phillips, Michael Green, Daniel Kellager, James Ennis, David Wilson, James Deasley, Isaiah Wallen, Abraham Predmore, Robert Bears, John Murry, James Fraley, John P. Simmons, Atkinson Parks, William Muliere, Enos R. Booth, James Flate, Michael Lawler, Patrick Rider, Edward Blake, N. S. Nolan, Thomas Chamberlain, Peter Losow, Francis Losow, Justin McCoy, Eustace Brownharot, Isaac Rake, Conde Carr, Moses Robinson, Look Flood, John Malov, Charles Woods, James Whiteford, Neil Brown, Robert Christie, Robert O'Harra, Albert Beeman, Samuel Cove, John McConachy, S. A. Price, Andrew P. Brink, Philip Sullivan, John Stanton, Garret Freeling, James Mitchell, Augustus Mathelen, Isaac Jobes, Abel Edwards, William McWee, John Darmedd, Luke Stansbie, Joseph Barry, Edward Seymour, William Baker, Daniel Colman, Robt. Edwards, Clark Hedden, Ward C. Courter, Aurora McCloud, Christian Bone, Stephen Conduct, Abijah O. Harrison, William T. Hall, Anthony L.

Frazee, Isaac F. Martin, Stephen Cutter, jr. Hugh Ward, Stephen H. Heddon, John Baker, Robert Taylor, Mahlon Search, William Todd, John Dell, Rine Crim, Caleb Terry, Christ. Blazier, Obadiah Older, Samuel Dawson, Edward Dawson, John Vreeland, Henry Cunningham, Giles Courter, George A. Huyler, Wm. Wharton, Henry O'Neil, Thomas Entwistle, Dennis McLaughlin, George Norman, Thos. Lynet, Jos. Thomson, David R. Schenck, Mich. McColligan, Robert Greenleaf, Martin Harney, Barney Malone, James Conologue, Francis Dale, Coley McDonnough, Hugh Conologue, Jas. Roake, Malachi Good, Patrick Murphy, Jas. Cassidy, John McCroney, Solomon Huston, James McCoombs, Peter Bulger, Robert Smith, John Catley, James Riley, John Ferguson, Hugh Campbell, Timothy Coleman, Samuel Lowrey, Wm. Mollineux, Edwin R. Owen, Henry Green, Isaac Hoff, Elias Green, Peter Barrant, John McCurdy, Wm. McCurdy, Hugh Richards, Wm. Bohrman, Nicholas Buckage, Michael Schaum, Lewis Schaum, Nicholas Hoffman, Daniel Garritt, Herman Vogeding, Daniel McAnall, Constantine Voisard, Peter Snyder, Frederick Wittee, Archibald McCambridge, Caspar Briel, Louis Reitz, Fred'k. Eberhardt, Aloys Abendsehn, Louis Becker, Wm. Kaltenback, sen., James Murdock, Wm. Kaltenback, jr. John Donly, Wm. Williams, Christ. John Wildie, Andrew J. Bell, Charles C. Fithian, Walker Beesley, Thomas Sinnickson 2d, Erriek H. Katts, John Starts, John Tash, being one hundred and ninety in number, with one vote given by John Slaughblower to Dickerson. There should also be deducted nine votes from the polls a Saddle River, being so many counted for them more than there were cast. There should, however, be added to them the votes of William A. Marker, David B. Brown, Andrew R. Gray, Patrick Smith, Charles Dean, George Smith, Wm. Crum, Robert McMuller, James Langdon, and Joseph F. Newcomb, and two votes not counted at the polls of Paterson, and to Vroom the vote of Asher Atkinson, improperly rejected at the polls.

The following table exhibits the returns, with the corrections made by us:

	Dickerson.	Vroom.	Ryall.	Cooper.	Kille.
	28,453	28,492	28,441	28,455	28,426
Deduct	200	199	199	199	199
	<u>28,253</u>	<u>28,293</u>	<u>28,242</u>	<u>28,256</u>	<u>28,227</u>
Add	12	13	12	12	12
	<u>28,265</u>	<u>28,306</u>	<u>28,254</u>	<u>28,268</u>	<u>28,239</u>
	Aycrigg.	Maxwell.	Halsted.	Stratton.	Yorke.
	28,295	28,383	28,337	28,396	28,321
Deduct	82	81	82	82	82
	<u>28,213</u>	<u>28,302</u>	<u>28,255</u>	<u>28,314</u>	<u>28,239</u>
Add	21	22	21	21	21
	<u>28,234</u>	<u>28,324</u>	<u>28,276</u>	<u>28,335</u>	<u>28,260</u>

The votes of John J. Alliger, Nelson Bedford, Herman C. Howard, John Smith, John O'Neil, and Wm. J. Ayres, were also illegal, but it did not appear for whom they voted. These votes do not affect the result.

We have thus brought our labors to a close in the case of the contested election from the State of New Jersey. They have been to us exceedingly annoying and irksome. They have banished us from the House, and excluded us from many of the duties imposed by our relation to our constituents. We have been deprived of the pleasure of serving those to whom we are under many obligations, and for whom we cherish the highest affection and respect. Our names have been gazetted as absentees from the Hall, without the facts which would have explained an apparent dereliction of duty. Owing to the peculiar organization of the committee, its proceedings, in the despatch of business, have been timorous, hesitating, and embarrassed; and, in consequence, the investigation has been unnecessarily protracted.

The hope that our labors would terminate in any useful result has not cheered us on the way. It is our deliberate judgment that the House is in little better condition to know the truth of the New Jersey case than it would have been if the case had never been referred to the Committee of Elections. The perversions of law, and the misconstructions of fact, daily occurring, to which we have already adverted, nothing could have induced us to persevere, for so long a period, but our sense of obligation to the House and to the People of New Jersey. Now, we would ask, what is to be done? Only three or four days of the session remain, and it is not possible for the House short of some weeks, to arrive at even a tolerable understanding of the case. It can at once be referred to the People of New Jersey, in accordance with the laudable suggestion made at an early day by one of the parties—a suggestion which every one can now see should have been embraced, and thus this House would have been saved infinite trouble, the public time would have been economized, and the country spared the evil resulting from the precedent established at the commencement of the session. Or will the House adopt the conclusions of the committee without examination or scrutiny?

This is inevitable if any action is taken on the subject at the present session. In such an event, we shall witness a consummation of the indignities inflicted on the people of New Jersey, and nothing will remain but to take an appeal to public sentiment, which is the supreme arbiter of "men and measures" in a free country.

The reliance of the undersigned on the efficacy of such an appeal they trust is not presumptuous, and it is on this ground alone, after all that has transpired during the session in respect to the New Jersey question, that they repose any confidence in the perpetuity of our free institutions, or the preservation of the liberties of the American People.

House of Representatives, July 16, 1840.

MILLARD FILLMORE,
TRUMAN SMITH,
JOHN M. BOTTS,
BENJ. RANDALL.

Printed by H. H. HASSEY, Elizabeth-Town, N. J.—Price, Two Dollars per hundred copies. Orders solicited.